

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0769-IWD-E **TCEQ ID:** RN100224641 **CASE NO.:** 33497
RESPONDENT NAME: Southwestern Public Service Company

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Nichols Station Power Plant, northwest of the intersection of Lakeside Drive and St. Francis Avenue, 1.25 miles west of State Highway 136 and 6.0 miles northeast (via State Highway 136) of Amarillo, Potter County</p> <p>TYPE OF OPERATION: Steam electric generating facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 1, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Libby Hogue, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-1165; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. David Eves, President and CEO, Southwestern Public Service Company, P.O. Box 1261, Amarillo, Texas 79105 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 17, 2007</p> <p>Date of NOV/NOE Relating to this Case: April 27, 2007 (NOE)</p> <p>Background Facts: This was a routine record review. One violation was documented.</p> <p>WATER</p> <p>Failed to comply with permitted effluent limitations [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001990000, Effluent Limitations and Monitoring Requirements No. 1 for Outfalls 001A, 005A, and 004A].</p>	<p>Total Assessed: \$4,320</p> <p>Total Deferred: \$864 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$1,728</p> <p>Total Paid to General Revenue: \$1,728</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A).</p> <p>2) The Order will also require the Respondent to, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0001990000. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): TX0124575, WQ0001990000

Attachment A
Docket Number: 2007-0769-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Southwestern Public Service Company
Payable Penalty Amount:	Three Thousand Four Hundred Fifty-Six Dollars (\$3,456)
SEP Amount:	One Thousand Seven Hundred Twenty-Eight Dollars (\$1,728)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP:	Potter County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

1. The first part of the report is a summary of the work done during the year.

2. The second part is a list of the work done during the year.

3. The third part is a list of the work done during the year.

4. The fourth part is a list of the work done during the year.

5. The fifth part is a list of the work done during the year.

6. The sixth part is a list of the work done during the year.

7. The seventh part is a list of the work done during the year.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

TCEQ

DATES

Assigned

14-May-2007

PCW

15-May-2007

Screening

15-May-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Southwestern Public Service Company

Reg. Ent. Ref. No. RN100224641

Facility/Site Region 1-Amarillo

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 33497

Docket No. 2007-0769-IWD-E

Media Program(s) Water Quality

Multi-Media

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$10,000

No. of Violations 1

Order Type 1660

Enf. Coordinator Libby Hogue

EC's Team EnforcementTeam 3

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

\$3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

47% Enhancement

Subtotals 2, 3, & 7

\$1,410

Notes

A 47% enhancement is recommended for having nine NOV's for same or similar effluent violations and one NOV for a non-similar violation.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV

NOV to EDRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts \$150
Approx. Cost of Compliance \$2,000

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$4,410

OTHER FACTORS AS JUSTICE MAY REQUIRE

-2%

Adjustment

-\$90

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Recommended reduction in the penalty to prevent double-enhancement of the penalty amount for same violations that were not self-reported.

Final Penalty Amount

\$4,320

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$4,320

DEFERRAL

20%

Reduction

Adjustment

-\$864

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$3,456

Screening Date 15-May-2007

Docket No. 2007-0769-IWD-E

PCW

Respondent Southwestern Public Service Company

Policy Revision 2 (September 2002)

Case ID No. 33497

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100224641

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	9	45%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments, or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 47%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

A 47% enhancement is recommended for having nine NOVs for same or similar effluent violations and one NOV for a non-similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 47%

Screening Date 15-May-2007

Docket No. 2007-0769-IWD-E

PCW

Respondent Southwestern Public Service Company

Policy Revision 2 (September 2002)

Case ID No. 33497

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100224641

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001990000, Effluent Limitations and Monitoring Requirements No.1 for Outfalls 001A, 005A, and 004A.

Violation Description Failed to comply with the permitted effluent limitations.
See attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

As a result of this violation, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

93 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events (one for each outfall) are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$150

Violation Final Penalty Total \$4,320

This violation Final Assessed Penalty (adjusted for limits) \$4,320

Economic Benefit Worksheet

Respondent Southwestern Public Service Company

Case ID No. 33497

Reg. Ent. Reference No. RN100224641

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	31-Jul-2006	31-Jan-2008	1.5	\$150	n/a	\$150

Notes for DELAYED costs

The estimated cost for additional oversight and sampling which could have reduced or alleviated the exceedances. Date required is the date the noncompliance started and the final date is the anticipated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$150

ATTACHMENT

Effluent Violation Table
 Southwestern Public Service Company
 TPDES Permit No. WQ0001990000 (Outfalls 001A, 005A, and 004A)
 Docket No. 2007-0769-IWD-E

Permitted Effluent Limits	Monitoring Period End Date		
	07/31/2006	08/31/2006	01/31/2007
(outfall 001A) pH > or = to 6.0 standard units nor exceed 9.0 standard units	C	C	9.14
(outfall 005A) Total Iron Daily max. 1.0 mg/L	8.3	C	C
(outfall 005A) TSS Daily max. 100 mg/L	1683	C	C
(outfall 005A) Total Aluminum Daily max. 1.765 mg/L	4.2	5.1	C
(outfall 004A) Total Dissolved Solids Daily max. 4500 mg/L	C	5240	C

max. = maximum

(> or =) = greater than or equal to

mg/L = milligrams per liter

Compliance History

Customer/Respondent/Owner-Operator: CN601481336 Southwestern Public Service Company Classification: AVERAGE Rating: 1.91

Regulated Entity: RN100224641 NICHOLS STATION POWER PLANT Classification: AVERAGE Site Rating: 0.35

ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	PG0040T
AIR OPERATING PERMITS	PERMIT	13
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD007369713
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30099
WASTEWATER	PERMIT	WQ0001990000
WASTEWATER	PERMIT	TX0124575
WASTEWATER	PERMIT	TPDES0124575
UNDERGROUND INJECTION CONTROL	PERMIT	WDW339
UNDERGROUND INJECTION CONTROL	PERMIT	WDW340
UNDERGROUND INJECTION CONTROL	PERMIT	WDW341
UNDERGROUND INJECTION CONTROL	PERMIT	WDW342
UNDERGROUND INJECTION CONTROL	PERMIT	WDW338
AIR NEW SOURCE PERMITS	PERMIT	45589
AIR NEW SOURCE PERMITS	REGISTRATION	75244
AIR NEW SOURCE PERMITS	REGISTRATION	45589
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	PG0040T
AIR NEW SOURCE PERMITS	AFS NUM	4837500004
AIR NEW SOURCE PERMITS	PERMIT	15815
AIR NEW SOURCE PERMITS	PERMIT	18162

Location: NORTHWEST OF THE INTERSECTION OF LAKESIDE DR. AND ST. FRANCIS AVE., 1.25 MILES WEST OF STATE HIGHWAY 136 AND SIX MILES NORTHEAST (VIA STATE HIGHWAY 136) OF AMARILLO, POTTER COUNTY, TEXAS Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 01 - AMARILLO

Date Compliance History Prepared: May 15, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 14, 2002 to May 14, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Ms. Libby Hogue Phone: 512-239-1165

Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? Yes
- Has there been a (known) change in ownership of the site during the compliance period? No
- If Yes, who is the current owner? N/A
- If Yes, who was/were the prior owner(s)? N/A
- When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/25/2002	(5983)
2	02/18/2003	(9326)
3	03/27/2003	(236720)
4	04/28/2003	(329028)
5	05/05/2003	(34913)
6	05/27/2003	(329029)
7	06/05/2003	(8158)
8	06/27/2003	(329030)
9	06/29/2003	(119021)
10	07/24/2003	(145431)
11	07/30/2003	(329031)
12	08/07/2003	(115691)
13	08/21/2003	(151395)
14	08/28/2003	(329032)
15	10/01/2003	(329033)
16	10/29/2003	(329034)
17	12/01/2003	(329035)
18	12/30/2003	(329036)
19	01/23/2004	(329037)
20	03/01/2004	(329026)
21	03/15/2004	(265113)
22	03/30/2004	(329027)
23	04/16/2004	(267680)
24	04/27/2004	(368070)
25	05/25/2004	(368071)
26	06/15/2004	(275624)
27	06/25/2004	(277705)
28	06/29/2004	(368072)
29	07/28/2004	(368073)
30	08/17/2004	(290518)
31	08/31/2004	(368074)
32	09/28/2004	(368075)
33	10/26/2004	(368076)
34	11/30/2004	(368077)
35	12/28/2004	(390655)
36	01/27/2005	(390653)
37	01/27/2005	(390656)
38	02/16/2005	(350894)
39	03/17/2005	(373771)
40	03/29/2005	(390654)
41	05/03/2005	(428097)
42	05/27/2005	(428098)
43	06/14/2005	(395656)
44	06/17/2005	(395437)
45	06/27/2005	(428099)
46	07/08/2005	(395957)
47	07/12/2005	(399580)
48	07/19/2005	(448069)
49	07/28/2005	(401900)
50	08/17/2005	(404814)
51	08/25/2005	(448070)
52	09/23/2005	(448071)
53	10/25/2005	(493588)
54	11/22/2005	(437259)
55	11/29/2005	(493589)
56	12/28/2005	(493590)
57	01/04/2006	(451256)
58	01/26/2006	(493591)
59	02/13/2006	(454988)
60	03/03/2006	(493586)
61	03/27/2006	(493587)

Description: Failure to meet the limit for one or more permit parameter

Date: 11/23/2005 (437259)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)
30 TAC Chapter 305, SubChapter F 305.125(5)
TWC Chapter 26 26.121
TWC Chapter 26 26.121(a)(1)
TWC Chapter 26 26.121(a)(2)
TWC Chapter 26 26.121(a)(3)
TWC Chapter 26 26.121(a)[G]
TWC Chapter 26 26.121(b)
TWC Chapter 26 26.121(c)
TWC Chapter 26 26.121(d)
TWC Chapter 26 26.121(e)
TWC Chapter 26 26.121[G]

Rqmt Prov: PERMIT Permit Conditions

Description: Failure by the facility to prevent an unauthorized discharge of wastewater.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT Effluent Limitations & Monitoring Req.

Description: Failure to maintain pH effluent parameters within permitted range.

Date: 07/31/2006 (529009)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2006 (529010)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2007

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

62	05/02/2006	(506857)
63	05/26/2006	(506858)
64	05/31/2006	(464866)
65	06/01/2006	(479818)
66	06/29/2006	(506859)
67	07/24/2006	(529008)
68	08/18/2006	(529009)
69	08/24/2006	(509018)
70	09/26/2006	(529010)
71	10/27/2006	(552115)
72	10/31/2006	(517326)
73	11/27/2006	(552116)
74	12/27/2006	(552117)
75	03/23/2007	(553951)
76	05/07/2007	(557271)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/18/2003 (9326)
Self Report? NO

Classification: Moderate

Citation: 40 CFR Chapter 270, SubChapter I, PT 270, SubPT C 270.30(a)
Rqmt Prov: OP Section XIII, Part A
Description: Failed to adhere to permit provision.

Date: 06/30/2003 (329031)
Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 02/29/2004 (329027)
Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2004 (368073)
Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2005 (448069)
Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2005 (448071)
Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOUTHWESTERN PUBLIC SERVICE
COMPANY
RN100224641**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0769-IWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Southwestern Public Service Company ("SPSC") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and SPSC appear before the Commission and together stipulate that:

1. SPSC owns and operates a steam electric generating facility northwest of the intersection of Lakeside Drive and St. Francis Avenue, 1.25 miles west of State Highway 136 and 6.0 miles northeast (via State Highway 136) of Amarillo, Potter County, Texas (the "Facility").
2. SPSC has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and SPSC agree that the Commission has jurisdiction to enter this Agreed Order, and that SPSC is subject to the Commission's jurisdiction.
4. SPSC received notice of the violations alleged in Section II ("Allegations") on or about May 2, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by SPSC of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Three Hundred Twenty Dollars (\$4,320) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). SPSC has paid One Thousand Seven Hundred Twenty-Eight Dollars (\$1,728) of the administrative penalty and Eight Hundred Sixty-Four Dollars (\$864) is deferred contingent upon SPSC's timely and satisfactory compliance with all the terms of this Agreed Order, the Executive Director may require SPSC to pay all or part of the deferred penalty. One Thousand Seven Hundred Twenty-Eight Dollars (\$1,728) shall be conditionally offset by the completion of a Supplemental Environmental Project.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and SPSC have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that SPSC has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, SPSC is alleged to have failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001990000, Effluent Limitations and Monitoring Requirements No. 1 for Outfalls 001A, 005A, and 004A, as documented during a record review conducted on April 17, 2007, as indicated in the table below.

Effluent Violation Table Southwestern Public Service Company TPDES Permit No. WQ0001990000 (Outfalls 001A, 005A, and 004A)			
Permitted Effluent Limits	Monitoring Period End Date		
	07/31/2006	08/31/2006	01/31/2007
(outfall 001A) pH > or = to 6.0 standard units nor exceed 9.0 standard units	C	C	9.14
(outfall 005A) Total Iron Daily max. 1.0 mg/L	8.3	C	C
(outfall 005A) TSS Daily max. 100 mg/L	1683	C	C
(outfall 005A) Total Aluminum Daily max. 1.765 mg/L	4.2	5.1	C
(outfall 004A) Total Dissolved Solids Daily max. 4500 mg/L	C	5240	C

max. = maximum

(> or =) = greater than or equal to

mg/L = milligrams per liter

III. DENIALS

SPSC generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that SPSC pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and SPSC's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Southwestern Public Service Company, Docket No. 2007-0769-IWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The SPSC shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. ADMIN. CODE § 7.067. As set forth in Section I, Paragraph 6, One Thousand Seven Hundred Twenty-Eight Dollars (\$1,728) of the assessed administrative penalty shall be offset with the condition that SPSC implement the SEP defined in Attachment A, incorporated herein by reference. The SPSC's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the SPSC shall within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0001990000. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

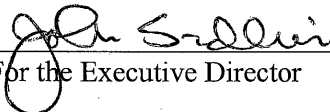
Mr. Jim McWilliams, Water Manager
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

4. The provisions of this Agreed Order shall apply to and be binding upon SPSC. SPSC is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If SPSC fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, SPSC's failure to comply is not a violation of this Agreed Order. SPSC shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. SPSC shall notify the Executive Director within seven days after SPSC becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by SPSC shall be made in writing to the Executive Director. Extensions are not effective until SPSC receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against SPSC in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to SPSC, or three days after the date on which the Commission mails notice of the Order to SPSC, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

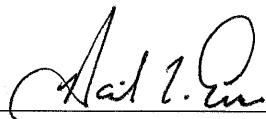
Date 10/5/07

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date July 24, 2007

Name (Printed or typed)
Authorized Representative of
Southwestern Public Service Company

Title PRESIDENT & CEO

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

7000; 100 1000

Q. A. L.

500 + 1000000

and I give

Attachment A
Docket Number: 2007-0769-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Southwestern Public Service Company
Payable Penalty Amount:	Three Thousand Four Hundred Fifty-Six Dollars (\$3,456)
SEP Amount:	One Thousand Seven Hundred Twenty-Eight Dollars (\$1,728)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP:	Potter County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

